

February 26, 2007

VIA FACSIMILE & U.S. MAIL

Chief Thomas B. Schofield
Litchfield Fire Department
257 Charles Bancroft Highway
Litchfield, NH 03052

Dear Chief Schofield:

At your request, the Criminal Justice Bureau of this office initiated a criminal investigation of an alleged break-in and act of vandalism at the Litchfield Fire Department occurring on Sunday morning, February 18, 2007.

As part of the investigation, two Litchfield police officers, Officer Russell Hartley, III, and Officer Gary Gott, were interviewed. Both officers responded to the Attorney General's Office voluntarily to provide information concerning this matter. In these interviews, the officers reported the following:

As part of their routine duties on February 18, Officers Hartley and Gott had checked the doors to the Litchfield Fire Department at approximately 4:24 a.m. At that time, the officers reported to Hillsborough County Dispatch that they had discovered an unsecured door. (They also recorded their presence at the fire department in their respective LPD activity logs). Upon discovering the unsecured door, the officers entered the fire department to ensure that no intruders were present. After searching the premises and determining that no one else was present within the building, the officers reported that they decided to play a joke or prank on the fire department involving the staging of a party. As part of this joke or prank, the officers admitted to moving two bags of opened chips onto a table, placing cups onto that same table, turning pictures upside down, turning the television to the Oxygen channel, and writing a disparaging note concerning the fire chief as well as uncomplimentary comments about fire department practices on a white board. The officers denied having damaged any property within the fire department.

Independent of what the police officers reported, our investigation revealed no evidence that there was forced entry into the fire department or damage caused to property.

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The Attorney General's Office investigates and prosecutes possible criminal conduct. Accordingly, it is our obligation to view the information gathered in an investigation to determine whether any crimes were committed. In this case, we have concluded that initiation of criminal charges against Officer Hartley and Officer Gott is not warranted.

Here, the officers reported finding an unsecured door. Once they noted the unsecured door, it was their duty as law enforcement officers to enter the fire department to check for intruders. Accordingly, it cannot be concluded that the officers were "not licensed or privileged" to enter as required to prove the crimes of burglary (RSA 635:1) or criminal trespass (RSA 635:2). The fact that there was no forced entry and the officers reported their presence and purpose at the fire department to county dispatch and in internal activity records supports this conclusion.

We also reviewed the facts to determine whether charges for criminal mischief are warranted. Commission of criminal mischief under RSA 634:2 requires proof that the actor "purposely or recklessly damaged property of another." Criminal mischief is a class B misdemeanor unless the actor purposely caused or attempted to cause pecuniary loss in excess of \$100, in which case the offense may be a class A misdemeanor. Here, there is no evidence that the officers damaged property of the fire department or caused pecuniary loss. The officers' actions of turning pictures upside down, writing uncomplimentary messages, and causing a mess was no doubt upsetting to you and your department but falls short of constituting "damage" or "pecuniary loss" under the statute. Accordingly, we have concluded that charges for criminal mischief are not warranted.

I note in closing that while the officers do not face criminal charges, we find their conduct to be entirely inappropriate. I further understand that the officers' actions are under review by the town and that they may face administrative sanctions arising from this event. Should you have any questions concerning our investigation of this case, please do not hesitate to contact me.

Sincerely,

Simon R. Brown
Senior Assistant Attorney General
Chief, Criminal Justice Bureau
(603) 271-3671

SRB/mmp

cc: Chief Joseph O'Brion, Litchfield Police Department
Litchfield Board of Selectmen

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